

Meet the Quinn Emanuel Partner Who's Been on Either Side of a Pair of Major COVID-Era Delaware Chancery Merger Decisions

Quinn's Andrew Rossman won a ruling from the Delaware Chancery Court late last year allowing a client to walk away from a deal. Last week he got a ruling forcing Kohlberg & Co. to go through with its acquisition of a company that sells cake decorations and technology for use in grocery store bakeries.

By Ross Todd
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Despite all the litigation filed in the Delaware Chancery Court last year over deals scuttled by the COVID-19 crisis, it appears just two have resulted so far in full-blown trials.

It's hard to take much from a sample size of two, but I can tell you this much: No matter if you're a buyer attempting to walk away from a deal or a seller trying to force a buyer to make good on an offer, it's a good idea to get **Andrew Rossman** of **Quinn Emanuel Urquhart & Sullivan** on your side.

Rossman was part of a Quinn Emanuel team including partners Michael Carlinsky and John Rhie who last year won a post-trial ruling from Vice Chancellor J. Travis Laster allowing their client Mirae Asset, the largest asset manager in South Korea, **to walk away from a \$5.8 billion deal** to buy 15 luxury hotels in the U.S. That ruling, which also awarded Mirae back its \$581 million deposit on the deal with interest, as well as nearly \$3.7 million in transaction-related expenses, and attorneys' fee, landed the Quinn team **"Litigator of the Week"** honors in early December.

On Friday Rossman got another post-trial victory from the Chancery Court, this time for his work on the seller side. Vice Chancellor Kathaleen McCormick on Friday ruled in favor of Quinn's client, private equity firm Snow Phipps Group, by ordering Kohlberg



Courtesy Photos

Andrew Rossman, with Quinn Emanuel.

& Co. to complete its purchase of DecoPac Inc., a Snow Phipps portfolio company that sells cake decorations and technology for use in grocery store bakeries. (Google "PhotoCake" if you want to know the sorts of things DecoPac makes possible.)

When we caught up with Rossman on Monday, we asked him what it's like playing on both sides of Delaware merger cases. "Every case is decided on its own facts. But it sure helps when the facts show your client was in the right," he said.

In attempting to put the brakes on the DecoPac deal, Kohlberg and its lawyers at **Paul, Weiss, Rifkind, Wharton & Garrison** had argued that the pandemic was reasonably likely to trigger a material adverse effect clause in the purchase agreement signed early in March 2020. They also contended that the company had failed to operate in the “ordinary course of business” as required under the stock purchase agreement because it implemented cost-cutting measures and drew down \$15 million on its \$25 million credit facility.

McCormick’s [126-page decision](#) provides a highly readable rundown of the deal’s demise spun from email traffic and business projections on either side of the deal. The judge concludes that while Snow Phipps and DecoPac’s management were working to put together real time sales and revenue data that showed a potential bounceback for the company, the Kohlberg team put together their own more pessimistic predictions that lacked the company’s input. Here’s the judge’s summation of the Kohlberg approach:

Rather than use reasonable best efforts to work toward a definitive credit agreement, the buyers called their litigation counsel and began evaluating ways to get out of the deal. Without input from DecoPac management, they prepared a draconian reforecast of DecoPac’s projected sales based on uninformed (and largely unexplained) assumptions that were inconsistent with real-time sales data. They sent this reforecast to their lenders with demands for more favorable debt financing terms. When the lenders refused the buyers’ demands, the buyers informed the seller that debt funding was no longer available. The buyers then conducted a perfunctory and unsuccessful four-day search for alternative debt financing at the seller’s insistence

Rossman and his team proved at trial that lenders were willing and able to provide financing for the deal under the original terms.

“We’re pleased and grateful that after a careful review of the trial record, Vice Chancellor McCormick found

for Snow Phipps across the board and ordered the closing our clients have steadfastly pursued for a year,” Rossman said.

His prior win on the seller side for Mirae comes up in Friday’s decision during the discussion of whether DecoPac breached its covenant to maintain operations in the “ordinary course of business.” There, McCormick found DecoPac’s cost-cutting measures fell in line with historical practices at the company during times of decreased production. She also noted that DecoPac’s drawdown of its revolver was in line with what all of Snow Phipps portfolio companies were doing at the time, and the company paid the amount back in months without spending any of it.

That, she found, was a far cry from Mirae’s case where hotel staff and services had been slashed and two hotels had been shut down completely. On top of that, the judge also found that Kohlberg and Paul Weiss had waived the cost-cutting arguments since they didn’t raise the issue until a December 2020 pre-trial brief, after the decision in the Mirae case had been handed down.

Andrew Gordon of Paul Weiss didn’t respond to a message seeking comment on the decision.

McCormick notes in Friday’s decision that sales at DecoPac have started to recover, just as those early management projections suggested.

“Perhaps there is a greater need to celebrate the milestones of life amidst the tragedy of a pandemic,” McCormick wrote. “Or perhaps humans simply have an insatiable desire for decorated cakes.”

Perhaps, all of the above.

Ross Todd is the Editor/columnist for the *Am Law Litigation Daily*. He writes about litigation of all sorts. Previously, Ross was the Bureau Chief of *The Recorder*, ALM’s California affiliate. Contact Ross at rtodd@alm.com. On Twitter: [@Ross_Todd](https://twitter.com/Ross_Todd).